IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.127 OF 2006

Shri Shankar @ Daji Nilkanth Sawajee. ...Applicant
V/s.
The State of Maharashtra. ...Respondent

Mr.M.S. Sawant with J.H. Sawant for Applicant.
Ms.S.U. Gajre, APP for State.

CORAM : V.M. KANADE, J.

DATED : JANUARY 16, 2006

P.C. :-

. Heard learned Counsel for the applicant and learned APP for the State.

. The applicant is seeking an order of anticipatory bail as he is under apprehension that he is likely to be arrested in connection with an offence which is registered against him by the Malvan Police Station for the illegal possession of revolver without having a necessary license and an offence under Sections 3 and 25(1)(a) of the Arms Act which is registered against him.

2. The prosecution case is that the mid-term

elections of the Legislative Assembly from the Malwan Constituency were to be held in December 2005. During this period, the police received information that the applicant had kept Rs.25 lakhs and liquor bottles in his house for distributing them to the voters and other MLAs. The Investigating Officer, therefore, went to his house alongwith two panchas and searched the premises. However, he did not find the liquor bottles or cash which were allegedly kept in the house. He, however, recovered one revolver. The applicant did not have license to keep the said revolver and therefore, the said offence is registered against him.

3. The applicant initially filed an application for anticipatory bail in the Sessions Court and an order of ad-interim anticipatory bail was granted by the trial Court on 23rd December, 2005. After the said order was passed, the applicant approached the police and he was released on bail in the sum of Rs.15,000/-. The applicant on legal advise withdrew the application for anticipatory bail which was pending in the Sessions court. Thereafter, an application was filed by the

police for cancellation of bail on the ground that the applicant had been released on bail on account of the interim order passed by the Sessions Court. The applicant again made second application for anticipatory bail. The Sessions Court, however, rejected the said application on the ground that while withdrawing the first application, liberty has not been obtained by the applicant to file the second application. Against the said order, the present application has been filed by the applicant.

4. It is an admitted position that the house of the applicant was searched in his absence and that too when the Investigating Officer did not have the search warrant. Further, it is an admitted position that they did not recover liquor and cash which was allegedly kept illegally in the house of the applicant. In my view, this is a fit case for grant of anticipatory bail considering the fact that the applicant was to campaign for one of the candidate who was contesting the election. It was the duty of the Investigating Officer to obtain necessary search warrant. The possibility of

planting the revolver also cannot be ruled out and this fact will have to be established at the time of trial.

5. In the event of the applicant's arrest by Malwan Police Station in connection with C.R.No.3012/05 dated 16.11.2005 under Sections 3 and 25(1)(a) of the Arms Act, the applicant be released on bail in the sum of Rs.5,000/- with one or two sureties in the like amount.

6. It is clarified that any observations made by this Court while passing this order cannot be treated as an expression of opinion on the merits in the case and the trial Court may decide the case on its own merits after the chargesheet is filed. The applicant to report the Malvan Police Station once in a month.

. Application is allowed in the above terms.

(V.M. KANADE, J.)